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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,799	06/07/2001	Nagendra Rangavajhyala	112701-194	2978
29157	7590	02/24/2004	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			PADEN, CAROLYN A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/681,799

Applicant(s)

RANGAVAJHYALA ET AL.

Examiner

Carolyn A Paden

Art Unit

1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-13,15-20 and 24-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-13,15-20 and 24-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-13, 15-20, 24-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cope (5,547,927).

Cope discloses an enteral nutritional product that contains soy protein hydrolysate that has a degree of hydrolysis that ranges from 8 to 15% (column 5, lines 34-35). The protein used in the product is stated to contain about 60% soy protein hydrolysate but also contains whey protein and pea protein (column 5, lines 17-19). The percentages that are used in the product are shown at Table 6. The claims appear to differ from the reference in the recitation that the product is infant formula. This nutritional formula would have been expected to contain all of the essential nutrients required for the health of a human. Infant formulas, even soy-based infant formulas, are well known in the art, as noted by the wide array of commercial products that are in the grocery store. Further, FDA has promulgated an infant formula act, which outlines the nutritional requirements beverages that can be called infant formulas. Thus to modify

the beverage of Cope to incorporate all of the nutrient requirements for an infant formula would have been obvious to one having ordinary skill in the art of art of manufacturing foods for individual with special needs. It is appreciated that rice starch is not mentioned in the Cope but to use rice starch would have been an obvious use for this known carbohydrate.

Claims 1, 20 and 35 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for 1.2% or 2% corn starch with kappa carrageenan or iota carrageenan as a stabilizer, does not reasonably provide enablement for any and all amount of rice starch or corn starch as a stabilizer in soy hydrolysate based infant formula (see Table 4). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or

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by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 2-13-04
PRIMARY EXAMINER
GROUP 1900 1761